

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

K.S., a minor, by and through her parents, P.S. and
M.S.,

No. C 06-07218 SI

Plaintiff,

**ORDER DENYING PLAINTIFF'S
MOTION FOR ATTORNEY'S FEES**

v.

FREMONT UNIFIED SCHOOL DISTRICT,

Defendant.

Before the Court is a motion for attorney's fees filed by plaintiff K.S., a minor by and through her parents P.S. and M.S. Pursuant to Civil Local Rule 7-1(b), the Court finds this matter appropriate for resolution without oral argument, and hereby VACATES the hearing. Having considered the papers submitted, and for good cause shown, the Court hereby DENIES plaintiff's Motion.

BACKGROUND

Plaintiff is an eight-year-old girl diagnosed with autism. She brought suit against defendant pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400, *et seq.* Plaintiff sought judicial review of an administrative law judge's ("ALJ") decision that defendant properly provided plaintiff with a free and appropriate public education ("FAPE").

Resolving cross-motions for summary judgment, this Court granted each motion in part and denied each motion in part. *See* Feb. 22, 2008 Order (Docket No. 149). Agreeing with plaintiff, the Court found that the ALJ had incorrectly determined the credibility of the witnesses. *Id.* at 15. The Court therefore remanded so that the ALJ could appropriately weigh the witness testimony and reassess

the ultimate decision of whether defendant provided plaintiff a FAPE. *Id.* at 15–16. This Court resolved two other issues on summary judgement in defendant’s favor. The Court found that: (1) defendant appropriately included plaintiff’s parents while designing plaintiff’s individualized education program (“IEP”); and (2) the ALJ properly awarded sanctions against plaintiff’s counsel. *Id.* at 19, 22–23.

Plaintiffs now request fees under the IDEA, based on the Court’s remand to the ALJ.

LEGAL STANDARD

The IDEA allows the Court to award attorney fees to a prevailing party, when the prevailing party is the parent of a child with disabilities and brought suit pursuant to the IDEA. 20 U.S.C. § 1415(i)(3)(B)(I). In the Ninth Circuit, “prevailing party” status for IDEA cases is determined according to the standard articulated in *Buckhannon Board & Care Home, Inc. v. West Virginia Department Of Health & Human Resources*, 532 U.S. 598 (2001). *See Shapiro ex rel. Shapiro v. Paradise Valley Unified Sch. Dist. No. 69*, 374 F. 3d 857, 865 (9th Cir. 2004) (holding that *Buckhannon* governs IDEA fees in the Ninth Circuit). *Buckhannon* requires a party to prevail “on the merits” such that there is a “material alteration of the legal relationship of the parties.” *Buckhannon*, 532 U.S. at 603–04 (quoting *Texas State Teachers Ass’n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 792–93 (1989) (finding the change in legal relationship to be the “touchstone” aspect of the prevailing party inquiry)); *see also Park, ex rel. Park v. Anaheim Union High Sch. Dist.*, 464 F. 3d 1025, 1035 (9th Cir. 2006) (focusing on the change in legal relationship while deciding IDEA fees litigation).

A change in the parties’ legal relationship occurs when the court orders relief on the merits. *Buckhannon*, 532 U.S. at 603–04 (“[A] ‘prevailing party’ is one who has been awarded some relief . . . [E]nforceable judgments on the merits . . . [are] necessary to permit an award of attorney’s fees.”); *Hewitt v. Helms*, 482 U.S. 755, 760 (1987) (“Respect for ordinary language requires that a plaintiff receive at least some relief on the merits of his claim before he can be said to prevail.”); *see, e.g., Park*, 464 F.3d at 1035 (finding the legal relationship changed where defendant school district was ordered to provide plaintiff with compensatory education). Where the court does not grant at least some relief on the merits, there is not an adequate change in the legal relationship in order for the court to grant fees. *See Hewitt*, 482 U.S. at 760 (awarding no fees under 42 U.S.C. § 1988 because although plaintiff’s

1 constitutional rights had been violated, no specific relief was awarded); and *Hanrahan v. Hampton*, 446
 2 U.S. 754, 757 (1980) (awarding no fees under 42 U.S.C. § 1988 although plaintiff’s appeal successfully
 3 reversed a directed verdict).

4 5 DISCUSSION

6 Plaintiff seeks attorney’s fees subsequent to the Court’s remand to the ALJ. Defendant asserts
 7 that a fee award is inappropriate because the remand does not alter the legal relationship of the parties.¹
 8 The Court agrees with defendant that attorney’s fees are not warranted because the Court’s remand has
 9 not affected a change in the legal relationship between the parties. Plaintiff is therefore not a prevailing
 10 party at this stage of the litigation.

11 As articulated in *Buckhannon*, a change in the legal relationship requires court-ordered relief on
 12 the merits. *Buckhannon*, 532 U.S. at 604. *Buckhannon* declined to award fees in a case where litigation
 13 against a state spurred the state’s legislature to change the law. *Id.* at 600. The legislative change was
 14 essentially the result sought by plaintiff, but since it did not result from judicially-ordered relief, the
 15 Court did not find the legal relationship to be changed. *Id.* at 600, 605–06 (“[E]nforceable judgments
 16 on the merits and court-ordered consent decrees create the ‘material alteration of the legal relationship
 17 of the parties’ necessary to permit an award of attorney’s fees.” (quoting *Texas State Teachers*, 489 U.S.
 18 at 792–93)).

19 *Buckhannon*’s language pertaining to the change in legal relationship was drawn from *Texas*
 20 *State Teachers*, which emphasized the importance of court-ordered relief and its role in changing the
 21 legal relationship:

22 “[R]espect for ordinary language requires that a plaintiff receive at least some relief on
 23 the merits of his claim before he can be said to prevail.” Thus, at a minimum, to be
 24 considered a prevailing party . . . the plaintiff must be able to point to a resolution of the
 25 dispute which changes the legal relationship between itself and the defendant. . . . The
 26 touchstone of the prevailing party inquiry must be the material alteration of the legal
 27 relationship of the parties in a manner which Congress sought to promote in the fee
 28 statute.

27 ¹Defendants also assert a number of other grounds for denying or reducing the fee award.
 28 Because the “prevailing party” analysis is dispositive of fees, the Court does not reach those questions.

1 *Texas State Teachers*, 489 U.S. at 792–93 (quoting *Hewitt*, 482 U.S. at 760) (internal citations omitted).
 2 The Court ultimately awarded fees in that case because plaintiffs obtained a judgment vindicating their
 3 First Amendment rights. *Id.* at 793. The parties’ legal relationship changed because the defendant
 4 school district was required to allow certain speech on behalf of the plaintiff teacher’s union. *Id.*

5 *Buckhannon* and *Texas State Teachers* followed the logic of two prior Supreme Court cases,
 6 *Hewitt*, 482 U.S. 755, and *Hanrahan*, 446 U.S. 754. *See Buckhannon*, 532 U.S. at 604–05; *Texas State*
 7 *Teachers*, 489 U.S. at 790, 792. Both *Hewitt* and *Hanrahan* declined to award fees in civil rights cases
 8 where the plaintiff was fundamentally successful although no court-ordered relief was granted. *Hewitt*
 9 concerned a civil rights action brought by an inmate. *Hewitt*, 482 U.S. at 758. Although the court of
 10 appeals found that the prison violated the prisoner’s constitutional rights, no monetary relief could be
 11 granted due to qualified immunity, and no injunctive relief was appropriate because the prisoner had
 12 been released by the time of the decision. *Id.* at 758–59, 761–62. Even though judgment in the
 13 plaintiff’s favor was entered and the appellate court issued a statement in the plaintiff’s favor, he was
 14 not a “prevailing party” in the sense required by the fee-shifting statute because he had not obtained any
 15 judicially-ordered relief. *Id.* at 763.

16 Likewise, in *Hanrahan*, the court of appeals reversed the district court’s directed verdict against
 17 plaintiff and, moreover, issued rulings altering discovery in the plaintiff’s favor. *Hanrahan*, 446 U.S.
 18 at 756, 759. Nonetheless, plaintiff was not “prevailing” because he had not actually secured success on
 19 the merits. *Id.* at 757–58. “[I]t seems clearly to have been the intent of Congress to permit [fees] only
 20 to a party who has established his entitlement of some relief on the merits of his claims” *Id.* at 757.
 21 Particularly relevant to the case presently before this Court, the Supreme Court held that an appeal
 22 resulting in a retrial at the lower court does not constitute the success required of a prevailing party. *Id.*
 23 at 758.

24 The Ninth Circuit explicitly adopted *Buckhannon*’s “change in legal relationship” standard for
 25 IDEA cases, and courts have used the standard consistently. *Shapiro*, 374 F. 3d at 864–65 (adopting
 26 *Buckhannon* for Ninth Circuit IDEA cases); *see, e.g., Park*, 464 F. 3d at 1035 (finding a change in the
 27 legal relationship and awarding fees because the school district was required to provide certain
 28 educational services); *M.L. v. Federal Way Sch. Dist.*, 401 F. Supp. 2d 1158, 1163 (W.D. Wash. 2005)

1 (applying the legal relationship test on remand, and awarding fees where the appellate court reached
2 plaintiff's claims on the merits); *Parents of Student W v. Puyallup Sch. Dist.*, No. 3, 31 F.3d 1489, 1498
3 (9th Cir. 1994) (applying the legal relationship test). Based on this precedent, the Court is limited to
4 awarding attorney's fees only where some relief on the merits has been ordered, such that the parties'
5 relationship to one another has been altered.

6 Here, plaintiff is not entitled to fees because plaintiff has not affected a change in the legal
7 relationship between the parties. Although the Court's remand to the ALJ placed plaintiff in a better
8 litigating position than she was in prior to this Court's ruling, that ruling did not reach the merits of
9 plaintiff's IDEA claims (whether defendant provided plaintiff with a FAPE), and awarded no relief as
10 required by *Buckhannon*, *Texas State Teachers*, and *Hewitt*. In this case, the Court serves in an
11 appellate function, analogous to the situation in *Hanrahan*, and although this Court's decision may
12 affect the ultimate disposition of the lawsuit, plaintiff cannot be considered a prevailing party at this
13 time. See *Hanrahan*, 446 U.S. at 759; see also *Sammons v. Polk County Sch. Bd.*, 2007 WL
14 430663,*2-3 (M.D. Fla. Feb. 5, 2007) ("[T]he granting of a remand . . . does not confer prevailing party
15 status on Plaintiffs because the judgment remanding the claims to the ALJ for consideration of the
16 merits of Plaintiffs' FAPE . . . claims does not materially alter the legal relationship between the
17 parties.").

18 Plaintiff's arguments to the contrary are unconvincing. Plaintiff suggests that this Court's
19 remand changed the legal relationship of the parties, because defendant is now required to re-litigate
20 her case before the ALJ. However, requiring more litigation is certainly not relief on the merits, and
21 does not change the parties' current relationship, but merely prolongs it. Plaintiff's contention—that
22 requiring a response from the opposing party constitutes a change in relationship tantamount to
23 "prevailing"—is not realistic. A party can require a similar response merely by filing a complaint in
24 district court, but that clearly would not constitute a change in the legal relationship such that the filing
25 party is "prevailing." Further, awarding fees now could lead to an absurd result if the ALJ were to
26 determine that defendant did not deny plaintiff a FAPE and that plaintiff is not entitled to any tangible
27 relief regarding her education. Were that to occur, plaintiff clearly would not be a prevailing party. "In
28 the course of a proceeding that may result in the utter defeat of the plaintiff, he may nevertheless obtain

1 some favorable rulings—such as a remand, a discovery order, an order *in limine* excluding certain
 2 evidence, or an order disqualifying the defendant’s lawyer—that confer a benefit upon him until the
 3 rulings are ultimately vacated: tactical victories in what turns out to be a losing war. Such rulings do
 4 not create a right to attorney’s fees.” *Hunger v. Leininger*, 15 F. 3d 664, 670 (7th Cir. 1994).

5 Plaintiff also contends that *M.L.*, 401 F. Supp. 2d at 1162, authorizes fees when a court orders
 6 re-assessment. However, the situation in *M.L.* is distinct from the present case and illustrates why fees
 7 are inappropriate here. There, fees were awarded because the Ninth Circuit found for the plaintiff on
 8 the merits. The appellate court found that a regular education teacher had to be included in developing
 9 an IEP, and ordered the school district to do so. *Id.* at 1161–62. The parties ultimately settled for
 10 equitable reimbursement of \$2,478. *Id.* at 1162. The legal relationship between the parties was altered
 11 because one party, the school, was legally bound to do something for the other party, the plaintiff. *Id.*
 12 at 1163. This is unlike the present case where (1) the Court did not decide on the merits, and where (2)
 13 the ALJ (i.e., not a party) has been required to reassess an aspect of the case. Plaintiff asserts that
 14 reassessment of an IEP is no different than a reassessment by the ALJ; that argument is incorrect. An
 15 IEP reassessment is done by the school district, which is a party to the litigation, and thus constitutes
 16 a court-ordered change in the parties’ relationship. *See id.* A remand to the ALJ does not similarly alter
 17 the relationship between the parties.²

18 Plaintiff’s citation to *Shalala v. Schaefer*, 509 U.S. 292 (1993), is similarly unconvincing. In
 19 the specific context of the timing of a judgment under the Equal Access to Justice Act (EAJA), *Shalala*
 20 explained that a district court’s remand to an agency did indeed grant prevailing party status, and fees
 21 were awarded. *Id.* at 303. However, that decision was specific to the EAJA, 28 U.S.C. § 2412, and
 22 occurred after the ALJ had, on remand, already awarded social security benefits to the plaintiff, *Shalala*,
 23 509 U.S. at 302. The *Shalala* decision turned on a technical consideration of various ways to remand
 24 under 42 U.S.C. § 405(g), with the Court concluding that a remand pursuant to the statute’s fourth line
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26 ²Plaintiff cites to *R.B., ex rel. F.B. v. Napa Valley Unified School District*, 496 F. 3d 932, 941–42
 27 (9th Cir. 2007), to assert that there is no difference between an IEP and an administrative hearing. That
 28 case found that the school’s procedural defect in creating the IEP was cured by the due process provided
 by an administrative hearing. *Id.* The case does not suggest that an IEP and an administrative hearing
 are otherwise comparable.


1 does lend prevailing party status, but remand pursuant to the statute's sixth line would not. *Id.* In light
2 of the Ninth Circuit's explicit acceptance of *Buckhannon's* standard for IEDA fee shifting, *Shalala* does
3 not persuade the Court to award fees.

4
5 **CONCLUSION**

6 For the foregoing reasons and for good cause shown, the Court DENIES without prejudice
7 plaintiff's motion for fees [Docket No. 149]. The parties' objections to the declarations supporting the
8 Motion and Opposition are DISMISSED as moot [Docket Nos. 159, 168–70].

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10 **IT IS SO ORDERED.**

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12 Dated: April 16, 2008

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15 SUSAN ILLSTON
16 United States District Judge
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